IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 465 OF 2005

Shri Vasant Kalu Mhatre ... Appellant

V/s

M/s. Sadhana Nitrochem Ltd. ... Respondent

Mr. Pradeep M. Patil for the appellant.

Mr. Mukund Padgaonkar with P.S. Colabawalla i/by Mulla & Mulla & C.B.C. for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 9TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the 3rd Ad-hoc Addl. District Judge, Raigad-Alibag, dated 7.3.2005 allowing the appeal and setting aside the judgment and order passed by the Civil Judge, Jr. Divn., Roha, dismissing the suit of the plaintiff which was filed for removing the encroachment over the suit property.

2. The plaintiff which is a Public Limited Company having the property at M.I.D.C. Dhatav-Roha, had in the

year 1979 purchased the plot bearing Survey No. 28/1+3B/2 Plot No.2 area admeasuring 80 Ares from one Bapu Ramchandra Dhatavkar and others. Accordingly, the mutation entry No. 837 came into existence. The suit plot was measured on 16.1.1991 by the District Inspector of Land Records (D.I.L.R.) who also fixed the boundaries of the suit plot. The plot belonging to the defendants was adjacent to the plaintiff's plot. It was the case of the plaintiff that the defendants were well aware of the boundaries of the plot. On 13.11.1994, the plaintiff found that two cement poles on Eastern boundary were damaged and workers working there did not pay heed to the objection they raised. They were the workers of the defendants. Hence the plaintiff has filed the suit for perpetual as well as mandatory injunctions against the defendants and for peaceful possession of the encroached property.

3. Defendants challenged the suit on various grounds and denied the allegations made by the plaintiff.

The learned Trial Judge adjudicated the dispute on merits and on the basis of available evidence held that the plaintiff had failed to prove the alleged encroachment over the suit property as well as the

obstruction by the defendants in the suit property and, as such, the suit came to be dismissed.

The appeal was preferred to the District Court, Raigad-Alibag. The Addl. District Judge heard the appeal on merits and came to the conclusion that the evidence recorded and the order passed by the learned Trial Judge was erroneous and was liable to be quashed and set aside. Consequently, the appeal was allowed. Hence the present appeal by the aggrieved plaintiff is moved.

4. I have heard the learned counsel for both parties. Perused the record.

5. At the outset, it may be noted that both the learned counsel took me through the judgments of both the Courts below as well as some parts of the depositions of the witnesses for the parties. As can be seen from the record, the dispute pertains to the alleged encroachment over the plaintiff’s property which was adjudicated on the basis of three maps produced on record in support of the respective contentions. The map Exh.102 is a rough sketch produced by the plaintiff originally to the Revenue Authorities when they applied for N.A.

permission regarding the suit property which was brought on record on behalf of the defendants. As against this, the maps at Exhs. 98 and 113 are drawn by the D.I.L.R. and produced on behalf of the plaintiff in support of their plea of encroachment. The learned lower appellate Court Judge has assessed the evidence regarding the merits and de-merits of the maps on record and oral evidence in support of such maps. The learned appellate Court has relied upon the maps at Exh.98 and 113 while discarding the map at Exh.102 which was the rough sketch produced by the plaintiff before the Revenue Authorities while seeking N.A. permission. The lower appellate Court has, in my considered view, correctly relied upon the maps drawn by the D.I.L.R. instead of the rough sketch produced by the plaintiff before the Revenue Authorities in the year 1979. Perusal of the reasoning adopted by the lower appellate Court shows that he has properly appreciated the independent evidence regarding the maps and relied on oral evidence and, therefore, in my view, no interference is called for in the said findings recorded by the lower appellate Court especially when those are pertaining to the issues of facts. In other words, there is no substantial question of law appears to be involved in this case. The learned counsel for the appellant vehemently urged that there

was no proper appreciation of the available evidence by the lower appellate Court and, therefore, it requires consideration. However, in this regard it must be noted that the Apex Court, in the case of **Kondiba Dagadu kadam v/s Savitribai Sopan Gujar & ors., reported in 1990 (3) SCC 722** has categorically observed that the second appeal cannot be decided on merely equitable grounds. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the Trial Court in respect of credibility but even where it has rejected the witnesses accepted by the Trial Court, the same is no ground for interference in the second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In view of this aspect and the fact that the lower appellate Court is seen to have properly appreciated the entire evidence on record, I have no hesitation to hold that no interference is called for by this Court in the second appeal.

6. In the result, the appeal stands dismissed. Consequently, the Civil Application No. 799 of 2005

also stands dismissed.

(P.V. Kakade, J.)